

BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN

INVESTIGATION INTO)	
AMERITECH WISCONSIN'S)	
UNBUNDLED NETWORK)	DOCKET NO. 6720-TI-161
ELEMENTS)	

THE CLECS' REPLY BRIEF ON SWITCHING COSTS

AT&T Communications of Wisconsin, L.P., WorldCom, Inc., KMC Telecom, Inc., McLeodUSA Telecommunications Services, Inc., Rhythms Links, Inc., TDS Metrocom, Inc., and Time Warner Telecom of Wisconsin, L.P. (hereinafter the "CLECs"), by their counsel, submit their reply brief on switch related issues.¹

I. SWITCH-RELATED ISSUES

A. The Appropriate Switching Cost Inputs Should Be Calculated Pursuant to the CLECs' Suggestions For Adjustments to Ameritech's Switching Cost Studies (Issue I.D(1))

The CLECs' Initial Brief on Switching Costs contextualized the importance of switching issues to the companies seeking to break into the local market in the state of Wisconsin. Ameritech's current cost study inputs will result in pricing so high as to serve as an absolute bar to competitive entry in Wisconsin, thereby preserving Ameritech's current monopoly. For this reason, the Commission should consider not only the specific criticisms leveled against Ameritech's cost studies, but also the broader, thematic challenges the CLECs have raised against Ameritech's current study inputs.

¹ The CLECs in this brief address the cost issues set forth at section I.D of the post hearing Issues List.

For example, Ameritech's cost study models are new and represent a significant deviation from the inputs and algorithms used in cost models previously evaluated by this Commission, requiring a heightened scrutiny of the assumptions and inputs they contain. In addition, the models produce results that are contrary to the general trend of decreasing costs in the telecommunications industry. Not only do Ameritech's proposed loop rates exceed those currently tariffed by 192% to 322% (depending on the particular access area), but they exceed the rates approved by commissions in the other Ameritech region states by several multiples of these percentages. (*See* CLEC Initial Brief on Switching Costs at I.D-5-6.) This is particularly surprising given the \$45 million in merger savings that Ameritech claimed would result from the SBC/Ameritech merger. (Tr. Vol. 6, pp. 2078-79.) The Commission should keep these troubling facts in mind as it considers the parties' disagreements over switch-related issues.

It is equally important to note that Ameritech purchases its switches on a serving area-wide basis. In fact, strictly speaking, the vendor contracts are between ***XXXXXXXXXXXXXXXXXXXXX*** [CONFIDENTIAL] and the switch vendors. (*See* Late-Filed Ex. 133C(Tab E)***.) Ameritech's brief constitutes the first instance in which it has asserted that Ameritech itself purchases switches. (*See* Ameritech Initial Brief at 248.) There is nothing in the record to support that claim, and the switch vendor contracts in fact refute it. (*See* Ex. 133C(Tab E)***.) Furthermore, by purchasing its switches on a serving area-wide basis, Ameritech has the purchasing power of a large company and receives attendant discounts. This is why all 20 million Ameritech lines are discussed below.

B. The Parties Agree That the Current Switching Contract Prices Are the Appropriate Cost Inputs (Issue I.D(1)(a)1.)

Ameritech and the CLECs agree that the appropriate contract prices to use are those found in the *current* switch vendor contracts. (See Ameritech Initial Brief at 252-53; CLEC Initial Brief on Switching Costs at I.D-14.) The Commission should also note that despite Ameritech's asserted explosion of CCS jobs (*see* Tr. Vol. 3, p. 531***), switch vendor prices are still falling.

However, the CLECs disagree with Ameritech's assertion that ARPSM combines the price currently charged for replacement lines and the price currently charged for growth lines to compute a single price that a switch vendor would charge today if it replaced the two-tiered pricing structure with a single per-line price. (Ameritech Initial Brief at 252.) As CLEC coalition witness Dr. Ankum explained, the weighted price calculated by ARPSM does not represent a single price, and omits a significant number of lines – 14 million of them – from its calculations. (Tr. Vol. 6, p. 2107.) Ameritech cannot in good conscience argue that this skewed analysis is a fair representation of what it has paid for switches or what vendors would charge it for new switches. From a TELRIC perspective, Ameritech's price analysis is inappropriate because it fails to consider *total* demand, *i.e.*, the totality of the approximately 20 million lines served by Ameritech region-wide.

C. The CLECs' Growth v. Replacement Line Ratio Is the Appropriate One (Issue I.D(1)(a)2.)

Ameritech states that the issue of the appropriate ratio of growth to replacement lines is one of the two most important issues regarding its unbundled local switching

study. (Ameritech Initial Brief at 253.) On this much, the parties agree. The importance of the issue stems from the fact that the growth to replacement line ratio markedly impacts the output of the study – the greater the number of expensive growth lines that are factored into the model, the higher the resulting costs.² It thus comes as no surprise that Ameritech has vastly overstated the number of expensive growth lines in order to drive up the costs derived using the ARPSM model. (See CLECs’ Initial Brief on Switching Costs at I.D-14-18.)

Interestingly, Ameritech accuses the CLECs of capitalizing on the flip side of this equation – that is, inflating the number of replacement lines in order to reduce the bottom-line output of the ARPSM model. (See Ameritech Initial Brief at 253.) What is clear from the number of lines reflected in ARPSM is that Ameritech is only considering a small subset of its access lines -- *** [CONFIDENTIAL] replacement lines and *** [CONFIDENTIAL] growth lines. (See ARPSM, Tab “Line Sum,” Ex. 129C, Tab C.) Factoring in only *** [CONFIDENTIAL] of its 20 million lines is a violation of TELRIC principles, since the “T” in TELRIC stands for “total,” which would be all 20 million lines.

Under TELRIC, current vendor contracts should be applied against the total level of output/demand. In the instance of switching costs, *total* demand/output is, among other things, the total number of lines served by Ameritech’s switches. Whether the contracts specifically apply to those lines or not is immaterial. By comparison, the Commission should consider that the method advocated by the CLEC coalition here is, in fact, the method that Ameritech applies in all of its other studies. For example, in its loop

² Ameritech admits this: “the proportion of replacement to growth lines has a tremendous impact on what the average per-line price calculated by ARPSM is.” (Ameritech Initial Brief at 253).

cost studies, Ameritech applies its current vendor contracts against *all* loop facilities. *It does so even though many of Ameritech's loop facilities were constructed decades ago under very different contracts.* Indeed, if a CLEC leases an unbundled loop, Ameritech will charge the CLEC as if that loop were constructed today. The CLECs are not challenging that result as that is how a proper TELRIC study should be done. The same methodology should apply to a TELRIC switching study. Under TELRIC, if a switch was replaced 15 years ago under a different contract, then the current contract prices should be applied to that switch. This also means that the replacement lines of that switch should be valued at current replacement prices under the current contract, and that the growth lines should be valued at the growth prices under the current contract. One should not – as Ameritech does – simply ignore that older switches exist. A study must account for *all* switches to meet the “total” in TELRIC.

As for Ameritech's claims that Dr. Ankum wrongly assumes that the switch vendors would replace all of Ameritech's analog switches with new digital ones for the same prices for which they have agreed to replace analog ones because it involves too big a “hit” (*see* Ameritech Initial Brief at 257-58), the CLECs disagree. First, it should be noted that arguing about switch vendors does not really resolve the question at hand: what do current contracts require Ameritech to pay for its switches. Second, given the well-known dismal state of the switch vendor industry, the switch vendors would love to replace all Ameritech's switches. Moreover, they would almost certainly offer their switches at prices more favorable than those found in ARPSM and Ameritech's current contracts. As is true of most telecommunications products, SBC/Ameritech's newer contracts continue to show falling switch vendor prices. To argue that switch vendors

would not make Ameritech a better deal than Ameritech has received in the past is at best naïve.

Further, it is difficult to conceive that the vendors assumed that the number of replacement lines was only 2 million, while in reality that number is much closer to 12 million. Moreover, Ameritech did get big discounts on those 12 million lines. While that should not enter into the TELRIC analysis, it does serve to show the naiveté of Ameritech's argument that vendors would not replace this number of switches at steep discounts – vendors have already agreed to this in the past (when they replaced vast numbers of analog switches for Ameritech) and they surely would love to profit from doing it again.

In short, Ameritech's use of ARPSM is a radical departure from a well-established practice for doing TELRIC studies. If the Commission adopts Ameritech's proposal, it will not only artificially inflate Ameritech's switching rates, but it will also set a dangerous precedent that may induce Ameritech to deviate from TELRIC in future cost studies for UNEs other than switching. Of course, under TELRIC, Ameritech's previous prices – from old contracts – are irrelevant. As to the question of what prices vendors would be willing to sell switches for, the current contracts and the switching facilities placed under old contracts are critically important. Ameritech's example regarding "taking the hit" (*see* Ameritech Initial Brief at 258) provides a "one period" example and ignores some very important dynamics that are part of the complex negotiations between Ameritech and its switch vendors. Most importantly, Ameritech ignores the fact that old and new contracts overlap in time and that growth prices are set in view not just of the number of new replacement lines awarded in new contracts but

also in view of the replacement lines awarded under the old contracts. That is, the new growth prices need to recover losses incurred on both old replacement lines and new replacement lines. As a result, growth prices are higher than they would be if one considered only the replacement lines under the new contract. It is for this reason, among others, that simply weighing the replacement lines and the growth lines under the current contract – while ignoring all other facilities – leads one to overestimate Ameritech’s true switch vendor prices and switch investments.

Thus, the CLECs advocate the ***

[CONFIDENTIAL] line ratio advanced by CLEC coalition witness Dr. Ankum (*see* Exhibit 57 (AHA-2))***, rather than the ***

[CONFIDENTIAL] line ratio advocated by Ameritech. (Tr. Conf. Vol. 3, p. 648.) In addition to the criticism addressed above, the CLECs note that Ameritech’s proposed weighting considers only a short-run (*** [CONFIDENTIAL]) period, and therefore violates the “L” in TELRIC (“Long-Run”) as well. The CLECs have argued that the appropriate economic life of the switch is the FCC’s 18 years. (*See* Tr. Vol. 6, p. 2142.) By accepting Ameritech’s short-run time period, the Commission will effectively grant Ameritech a means by which to manipulate switch costs to its advantage. It is precisely in order to avoid such manipulations of the inputs that the FCC has implemented TELRIC.

The analysis put forth by the CLEC coalition properly calculates replacement lines and growth lines – *all* 20 million such lines -- over the entire economic life of the switch. This is proper TELRIC analysis because it considers all lines in Ameritech’s service area in the long run. As Ameritech has conceded, ARPSM is not a TELRIC

model. (Ameritech Initial Brief at 259.) The only way to make it one is to implement the CLECs' adjustments to ARPSM. As discussed in the CLECs' initial brief, this is precisely the approach adopted by the Michigan Commission in reviewing the identical ARPSM model:

The Staff is concerned that Ameritech Michigan . . . placed *too much weight on growth lines* (i.e., lines added after the switch is installed) for which vendors charge more per line than they charge for lines that are connected when the switch is first installed (cut-over lines). The Staff says that, by doing this, *Ameritech Michigan computed the cost for only incremental lines rather than all of its lines* as costing principle no. 3 requires. The Staff recommends that *Ameritech Michigan be required to rerun the study assuming 30% growth lines rather than 70% growth lines.*

The Commission concludes that *Ameritech Michigan's model is inconsistent with TSLRIC principles, which require that Ameritech Michigan price the cost of serving the entire current demand.* The model is explicitly designed to develop a cost based on relatively expensive growth lines for all of its network and a relatively few less expensive cut-over lines for a small number of switches.

(See Order, *In the Matter, on the Commission's Own Motion, to Consider the Total Service Long Run Incremental Costs for All Access, Toll, and Local Exchange Services Provided by Ameritech Michigan*, Case No. U-11831 (Nov. 16, 1999) at 13-14 (emphasis added); see also Tr. Vol. 6, pp. 2110-11).

This Commission should instruct Ameritech to re-run ARPSM to incorporate the CLECs' changes.

D. The CLEC-Proposed Ordering Intervals Are Proper (Issue I.D(1)(a)3.)

The parties agree that the CLEC-proposed ordering intervals are appropriate for the Lucent contracts. (*See* Ameritech Initial Brief at 261.) Ameritech's witness, William Palmer, conceded this point after reviewing the testimony of CLEC coalition witness Dr. Ankum. (Tr. Vol. 2, pp. 642-43.) However, Ameritech now asserts that this agreement is limited to the proper ordering interval for the *Lucent* contracts, and does not apply to the contracts with Ameritech's other two switch vendors. (*Id.*)

The CLECs' initial brief discussed that the ordering interval proposed by Ameritech for the Lucent contracts was unsupported by its workpapers, contrary to logic (since the prices at the Ameritech-proposed interval were "emergency" prices), and was irreconcilable with the amount of spare capacity that Ameritech claimed to have. (*See* CLEC Initial Brief on Switching Costs at I.D-18-19.) These same challenges apply equally to the shorter intervals Ameritech claims are proper for the Nortel and Siemens switch vendor contracts, which is why the CLECs discussed the switch vendor contracts generally, and not on a vendor-by-vendor basis. (*Id.*) Ameritech is therefore incorrect in claiming that the "CLECs do not challenge any of the other ordering intervals used in ARPSM." (Ameritech Initial Brief at 261.) As such, the Commission should apply the longest ordering intervals for each of the switch vendors as inputs to the ARPSM.

E. Ameritech's Blending of Switch Types and Manufacturers Is Appropriate Provided That the Proper Contract Prices Are Used (Issue I.D(1)(a)4.)

Ameritech is correct that the CLECs have not challenged the particular mix of switch types and manufacturers. (Ameritech Initial Brief at 261.) However, the CLECs have cautioned that appropriate mix should be driven by technological demand – not by

which vendor has the highest prices to plug into ARPSM – and by the appropriate contract prices. Specifically, the Commission should reject any attempts from Ameritech to use emergency pricing, improper purchasing intervals, or inaccurate growth to replacement line ratios, or to ignore the existence of applicable vendor discounts and incentives. Any claims that the CLECs have agreed to Ameritech's blending of switch types and manufacturers must be modified by these qualifiers.

F. Because the Mix of Analog and Digital Lines Impacts Switching Costs Markedly, The Commission Should Assume a Forward-Looking Mix of Analog and Digital Lines (Issue I.D(1)(a)5.)

Although the end user sees no difference between analog and digital lines, vendors charge Ameritech different prices for these line types. (Tr. Vol. 2, p. 700.) As with the growth to replacement line ratio, Ameritech seeks to capitalize upon this price differential by understating the number of digital lines to be placed in the future, driving up the costs derived in ARPSM.³

Ameritech achieves this goal by claiming that the digital and analog prices in the vendor contracts were based upon certain assumptions about how many of each type of line it would buy. (Ameritech Initial Brief at 262.) However, Ameritech must use a forward-looking digital to analog line mix in its cost studies. Because approximately ***xxxx*** [CONFIDENTIAL] of Ameritech's lines will be carried on DLC on a

³ Ameritech assumes that "for replacement lines, the prices were based on analog/digital line mixes of [Begin Conf ***
x *** End. Conf]." (Ameritech Initial Brief at 261). These numbers do not match up with the percentages used in the loop cost model. For example, the loop cost model assumes approximately 55% digital lines. One is left wondering how these digital lines are supposed to terminate on the switch if Ameritech assumes only *** [CONFIDENTIAL] digital lines for Lucent, Nortel and Siemens, respectively.

going-forward basis, the assumed percentages upon which it seeks to rely to its advantage are irrelevant to a TELRIC-based pricing inquiry. (*See* Tr. Vol. 9, p. 2132***)

Importantly, even Ameritech's own loop cost studies indicate a higher percentage of DLC-based loops. (*Id.*) The fact is that the switch vendors are contractually bound to sell lines to Ameritech at the prices in the contracts even if the vendors failed to project the demand for the particular line types properly. Thus, the "assumptions" underpinning the establishment of the digital and analog pricing are irrelevant to the appropriate technology mix going forward.

The CLECs' recommendation corresponds to the loop cost model. The percentages used in Dr. Ankum's re-run of ARPSM are based on the percentage digital lines and analog lines found in the loop cost model, LFAM. The Commission should be aware that it is important that the number of digital switch lines corresponds to the number of digital lines modeled in LFAM. If the number of digital switch lines does *not* correspond to the number of digital lines in the loop cost model, then the model is determining the costs for a network that cannot operate or function in the real world. It would be like trying to determine the costs of a car with one group of cost analysts operating under the assumption that the car will be an electric car (with no gas tank), while another group is working under the assumption that the car has an internal combustion engine (which needs a tank with gas.) The result would be a car that could not drive in the real world. This debate is no different from the one about whether or not we should assume a "hypothetical network." Even if one assumes a hypothetical network, it needs to be a network that can actually work in the real world.

The Commission should replace Ameritech's inputs to ARPSM with the CLECs' proposed *** *** [CONFIDENTIAL] digital to analog line ratio.

G. The Commission Should Adopt the CLEC-Proposed Fill Factors Because Ameritech's Proposal Is Discriminatory and Anticompetitive (Issue I.D(1)(a)6.)

Like the growth to replacement line ratio, the application of fill factors has a tremendous impact upon the ultimate costs derived through ARPSM. Knowing this, Ameritech has proposed fill factors based on its *actual* fills, rather than on forward-looking *target* fills. (Tr. Vol. 6, p. 2089.) These actual fills are considerably lower than the target fills proposed by the CLECs, resulting in higher cost outputs from ARPSM.

Ameritech's discussion of this issue focuses on the methodology for determining each of its actual fill factors. (See Ameritech Initial Brief at 263-265.) However, the real issue is the propriety of using actual fills as opposed to target fills at all. As the CLECs have explained previously, by using actual fills, Ameritech can inflate the costs of its unbundled network elements artificially by including excessive amounts of spare in its calculations. Ameritech benefits both from claiming the inappropriately high costs that result, but also from access to spare facilities conveniently financed by the CLECs. (Tr. Vol. 6, pp. 2089-91.) Even Ameritech's own witness, William Palmer, has testified previously that target fills, and not actual ones, should be used because they most realistically reflect efficient network use. (Tr. Vol. 2, pp. 959-60.)

Ameritech asserts that the proper fill factor for analog growth lines is *** *** [CONFIDENTIAL]. (See Ameritech Initial Brief at 264; Tr. Vol. 3, p. 487***.) This number is too low. Ameritech's own switch vendor contracts (*see, e.g.,* ***

XXX***

[CONFIDENTIAL]) list the specific Service Performance Standards at which the switch vendors must engineer the switches. Attachment 9 also lists all of the *** **

[CONFIDENTIAL] central office switches and specifies the fill that should be achieved on them. Virtually all of these switches are required to run at fills *** xxxxx

xxxxxxxxxxx*** [CONFIDENTIAL]. The other vendor contracts do not specify fill in this manner, but presumably Ameritech has equally understated the appropriate fill for these contracts too. The same arguments apply to Ameritech's absurdly-low *** **

[CONFIDENTIAL] fill factor for digital lines. (See Ameritech Initial Brief at 264.)

Ameritech also criticizes CLEC coalition witness Dr. August Ankum for his fill factor recommendation. (See Ameritech Initial Brief at 265.) The CLECs have stated that they "certainly agree that not all facilities are usable." (CLEC Initial Brief on Switching Costs at I.D-22.) Dr. Ankum discussed in his testimony why Ameritech's claimed fill factor percentages would result in outrageous purchasing intervals – a point it later conceded, as discussed above. (Tr. Vol. 9, pp. 2655-56***.) Dr. Ankum thus recommended that the Commission order Ameritech to eliminate the fictitious CCS fill factor and allow for only a reasonable amount of spare. (Tr. Vol. 6, pp. 2094-95 and 2132-33.) The CLECs' criticism of Ameritech's proposed fill factors is warranted and Dr. Ankum's proposal corrects Ameritech's flawed reasoning.

Because Ameritech's proposed switching fills are only obtainable based upon ***xxxxx*** [CONFIDENTIAL] purchasing intervals, which it has conceded is not the case, the Commission should adopt the CLEC-proposed adjustments to the switching fills. (Tr. Vol. 9, p. 2656***.)

H. The Commission Should Use the FCC-Approved Depreciation Lives and Salvage Factors (Issue I.D(1)(a)7.)

The CLECs urged the Commission to adopt the FCC-approved economic lives and salvage factors based upon the FCC authorities mandating their use, as described by CLEC coalition witness Dr. Ankum. (Tr. Vol. 6, pp. 2139-41.)

In contrast, Ameritech urges the Commission to approve the *** **
[CONFIDENTIAL] year digital switch depreciation life used in its cost study. (Ameritech Initial Brief at 265.) However, as Dr. Ankum noted, Ameritech's switch vendor contracts undermine any claims that this depreciation life is reasonable. The deployment schedules reflecting the installation of the same type of switches at the beginning and end of a seven-year period through the year 2003 demonstrate that both Ameritech and its vendors believe that the switches have a much longer useful life than that factored into its cost studies. (Tr. Vol. 6, p. 2142.) Because Ameritech's proposed economic lives and salvage factors are demonstrably unreasonable, the Commission should adopt the CLEC-advocated, FCC-approved ones.

I. The Commission Should Reduce Ameritech's Inflated Proposed Maintenance Factors Pursuant to the CLECs' Recommendations (Issue I.D(1)(a)8.)

The CLECs criticized Ameritech's basic methodology for calculating its maintenance factors and identified factors that resulted in inappropriately high results. In particular, CLEC coalition witness Brad Behounek pointed out that Ameritech applied annual expense increases far in excess of the current inflation rate, failed to take productivity increases or increases in the investment base due to network growth into

account, and included maintenance and repair expenses for equipment that was beyond its economic life. These flaws result in maintenance factors that are not in keeping with TELRIC principles, and in fact, *increase* over time. (See Tr. Vol. 8, pp. 2867-70; 2873-74.) As a result, Mr. Behounek recommended a 6.55% reduction in Ameritech's 1998 maintenance factors, after replacing Ameritech's inflation adjustments with 0% and reducing the maintenance factors by the portion of plant that is beyond its economic life as set forth in his confidential testimony. (See Tr. Vol. 8, p. 2870; Tr. Vol. 9, p. 3007***.)

Ameritech dismisses Mr. Behounek's recommendations as "general disagreement" with its maintenance factors and urges the application of those factors because "the CLECs do not appear to advance any independent challenge to Ameritech's application of those factors" (Ameritech Initial Brief at 266.) As summarized above, Mr. Behounek has expressed very detailed criticism of Ameritech's proposed maintenance factors, and has proposed very specific remedies for the flaws he has identified. As such, the CLECs urge the Commission to adjust Ameritech's proposed maintenance factors pursuant to Mr. Behounek's recommendations.

J. Right-To-Use Fees and Revenue Ready Fees Should Be Applied Pursuant to the Switching Contracts, and Not as Manipulated in ARPSM (Issue I.D(1)(a)9. and 10.)

Although the CLECs did not present testimony on the issue, they do oppose Ameritech's treatment of right-to-use ("RTU") and revenue ready fees to the extent that Ameritech would seek to apply weightings different than it does for line ports. (See CLEC Initial Brief on Switching Costs at I.D.-26.)

Ameritech concedes that RTU fees do not apply to growth lines, and explains that because ARPSM “calculates a single price per line regardless of vendor and regardless of whether the line is a cutover or growth line,” it was forced to derive an average per-line RTU fee for each vendor. (Ameritech Initial Brief at 266.) Ameritech also “levelized” the revenue ready fees for two switch vendors over the term of the contracts. (Ameritech Initial Brief at 267.) These weightings must follow the weightings for line ports.

K. The Commission Should Not Accept Ameritech’s In-Plant Factors as Inputs to ARPSM (Issue I.D.(1)(a)11.)

Ameritech claims that the CLECs did not submit testimony on the issue of in-plant factors and that the Commission should therefore approve their use in the cost study. Ameritech is wrong. As discussed in the CLECs’ initial brief, CLEC coalition witness Michael Starkey testified that based on the latest purchase agreement, there is no need to apply an in-plant factor because Ameritech receives equipment installation at no additional charge. (CLEC Initial Brief on Switching Costs at I.D.-27; *see also* Tr. Vol. 9, pp. 3360-65***.) The Commission should reject the inclusion of any in-plant factors in ARPSM because it does not incur these costs under the current purchase agreement.

II. LINE PORT ISSUES

A. The Commission Should Not Impose Usage Charges On Top of Per Port Charges (Issues I(D)(2)(a)1. and 2.)

Ameritech rightly notes that a primary switching issue in this docket is whether it may charge CLECs a rate for switching that includes both a flat rate, per-port component and a usage-sensitive component based on minutes of usage. (*See* Ameritech Initial Brief

at 268.) However, Ameritech wrongly claims that it “should be allowed to recover both kinds of costs because it incurs both” (*Id.*)

In addition to asserting that a portion of the per-port cost is usage-based, Ameritech focuses heavily on language in the First Report and Order,⁴ claiming that the FCC has “expressly recognized that ILECs like Ameritech incur usage-based switching costs (as well as flat-rated costs) and may recover them via a usage-sensitive rate.” (Ameritech Initial Brief at 268.) However, the cited language equally supports the CLECs’ position, which is also “entirely consistent” with FCC pronouncements on the recovery of switching costs:

We conclude that *a combination of a flat-rated charge for line ports*, which are dedicated to a single new entrant, and *either a flat rate or per-minute usage charge for the switching matrix and for trunk ports*, which constitute shared facilities, best reflects the way costs for unbundled local switching are incurred and is therefore reasonable.

(First Report and Order, ¶ 810)(emphasis added); see also 47 C.F.R. § 51.509(b) (“[l]ocal switching costs shall be recovered through *a combination of a flat-rate charge for line ports and one or more flat-rated or per-minute usage charges* for the switching matrix and for trunk ports”)(emphasis added).

While the FCC allows the recovery of usage-based switching costs, it has not, as Ameritech alleges “mandated this result.” (Ameritech Initial Brief at 269.) The FCC merely allows the recovery of usage-based switching costs through usage-sensitive rates. Ameritech must still demonstrate the existence of usage-based switching costs to meet this threshold – something it has failed to do. While Ameritech relies on the testimony of

⁴ First Report and Order, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98 (Aug. 8, 1996).

William Palmer to assert that it incurs a usage-based charge, it concedes that its switching contracts contain no usage-based rates. (Ameritech Initial Brief at 270.)

The CLECs detailed their arguments for a flat-rated port charge in their Initial Brief on Switching Costs and respectfully refer the Commission to that discussion of the switching contracts and Dr. Ankum's methodology for calculating the flat-rated port charge. (See CLEC Brief on Switching Costs at I.D.-27-36.) As explained at length there, the vendor contracts do not support a usage-based charge, as they contain no usage-based, CCS-based or MOU-based costs. (Tr. Vol. 6, p. 2117-19.) In addition, modern switches are installed with sufficient capacity to serve all lines without blockage, removing usage as a constraint on switch capacity, and assuring that there is no cost associated with switch usage. (*Id.* at 2101-02; 2117-18.) Because there are no identifiable usage-based charges, the CLECs recommended a flat-rated port charge.

Ameritech argues that its usage-based rate is analogous to the purchase of a tire – although there is no specific “usage” charge when buying the tire, a portion of the cost of the tire is attributable to usage, and a tire designed for heavier use costs more than a tire designed for lighter use. (Ameritech Initial Brief at 270-71.) Ameritech also blatantly distorts -- by only quoting half of his answer -- Dr. Ankum's testimony on cross examination by claiming that in Ohio, he stated that when usage increases beyond the level stated in the contracts, a switch vendor will come back and raise prices. (See Ameritech Initial Brief at 273.) However, after confirming his earlier Ohio testimony saying that a switch vendor *may* raise its price from \$100 to \$120 because a customer's switch usage had increased, Dr. Ankum continued until interrupted by Ameritech's counsel:

- A. *And then I go on to say, ["of course, as technology advances, it may just be that for the same price they can give you a better switch and prices could still fall."]* And in this particular case, I advance then to say so instead of paying \$100, you may pay \$90. But in essence, my answer is the same, yes.
- Q. You didn't use \$100 and \$90 in this testimony, did you?
- A. No. But as I said, ["of course, as technology advances, it may just be that for the same price they can give you a better switch and prices could still fall"] which is –

(Tr. Vol. 6, p. 2360) (emphasis added).

The CLECs provided a more apt analogy than the Ameritech tire example above in responding to Mr. Palmer's earlier "all-you-can-eat restaurant" hypothetical. While having the Green Bay Packers' training center move next door to a restaurant with an all-you-can-eat buffet may increase food costs, it will not increase the fixed rent costs for the restaurant building. Similarly, increased usage on the switches will not increase the contractually-limited prices in the switch vendor contracts. (*See* CLEC Brief on Switching Costs at I.D.-34.) Ameritech effectively concedes this point in acknowledging that switch vendors will not be able to raise their prices during the contract periods, but only at some point in the future. (*See* Ameritech Initial Brief at 272) ("[T]he vendor will not simply 'eat' the costs of providing greater capacity and more robustly equipped switches that are more expensive. Rather, the vendor will raise its per-port price *at the first opportunity . . .*"). Under the applicable switching contracts, there is no such opportunity. This is so despite Ameritech's professed fear that it "would be forced to pay the higher vendor prices – higher prices that result from the increase in usage" if a flat-rated port charge were adopted.

Ameritech is wrong. First, there is no demonstration that switch prices are going up – indeed, all indications are that they are going down. Ameritech claimed this would occur in many of its SBC/Ameritech merger filings. Second, the contracts are fixed for many years, and irrespective of usage, each line costs the same –whether it is a low-usage or high-usage line.

Given that there is no additional cost incurred by Ameritech when a CLEC uses its UNE line for a high volume customer, there is no cross-subsidy. However, if the Commission approves Ameritech’s proposal, then there will be a cross-subsidy. A high-volume CLEC customer on a UNE line will cause the CLEC to incur high levels of cost (in the form of ULS usage charges). But, Ameritech’s costs do not vary with usage. *The result is a subsidy from the CLEC to Ameritech.* Therefore, no usage-based charges are appropriate.

Finally, Ameritech persists in asserting that there has been a “dramatic” increase in the number of CCS jobs over the past several years. Dr. Ankum analyzed Mr. Palmer’s testimony on this subject and concluded that taking into account that Ameritech has 20 million lines supported by its switches, it would have a total switch investment of ***xxxxxxxxx*** [CONFIDENTIAL]. (Tr. Vol. 9, pp. 2638-39***) In this context, Ameritech’s claimed *** [CONFIDENTIAL] in CCS jobs in 1998, and ***xxxxxxxxxxxxx*** [CONFIDENTIAL] in 1999 are hardly significant, let alone evidence of “dramatic” growth in CCS jobs. (Tr. Vol. 3, p. 531***)

Ameritech does not address the CLECs’ testimony regarding the fact that modern switches such as those employed by Ameritech are designed with sufficient capacity to meet the maximum lines they will serve, and that switch usage is not a binding restraint

on switch capacity. (Tr. Vol. 6, p. 2117-18; 2101-02.) Nor does Ameritech acknowledge or address how its own Project Pronto will – by its own estimates – move a significant amount of traffic off the circuit switches during the same planning horizon addressed in its cost studies. (Tr. Vol. 2, pp. 922-23 and 926-27.) Given that Ameritech plans to augment greatly the amount of fiber deployed in its network, its failure to account for the impact of Project Pronto on its anticipated switch usage and CCS job “growth” speaks volumes.

The CLECs have outlined Dr. Ankum’s flat-rated port charge in detail in their initial brief and urge the Commission to adopt it. (*See* CLECs’ Initial Brief on Switching Costs at I.D.-30-32.) Should the Commission decide for some reason to implement a bifurcated switching charge, it should do so only after implementing the CLECs’ proposed adjustments to Ameritech’s switching models. These adjustments are detailed at pp. I.D.-37 through 40 of the CLECs’ Initial Brief on Switching Costs.

B. TELRIC Principles Should Govern the Costs of a Basic Port (Issue I.D(2)(b))

Ameritech correctly states that there is no debate in this proceeding regarding what features must be included in the cost of a basic port. (Ameritech Initial Brief at 275.) However, the CLECs believe that the cost of a basic port should be calculated pursuant to TELRIC principles, and not on the basis of Ameritech’s self-serving and overstated cost assertions. Ameritech concedes the appropriateness of using TELRIC to determine the price of the unbundled port. (*See* Ameritech Initial Brief at 275.)

C. Ameritech Inappropriately Loads Various Costs Onto the Port (Issues I.D(2)(c)1. through 7.)

Again, the parties agree on the appropriate components of an unbundled port. However, Ameritech double-recovers the costs of these components by adding their costs to the port cost, and also including a joint and common mark-up. The joint and common mark-up already encompasses the costs of these components. (Tr. Vol. 2, p. 707; Tr. Vol. 6, p. 2130; Tr. Vol. 9 p. 2665***; Ex. 57 (AHA-2)***) For this reason, the CLECs believe that the Commission should not load the costs for main distribution frame termination, telephone number, call intercept, directories, methods and procedures development, reports processing and billing systems development onto Ameritech's proposed port charge, since they are already factored into the joint and common mark-up.

D. Trunk Port Costs Should Be Calculated on a Minute-of-Use Basis (Issue I.D(2)(d))

In contrast to the flat-rated line port charge, the CLECs advocate a usage-based trunk port charge calculated on a MOU basis. (See CLEC Initial Brief on Switching Costs at I.D-41.) The CLECs do not dispute the list of ports contained in Ameritech's brief, but do urge the Commission to adopt the CLECs' adjustments to Ameritech's proposed fill factors and joint and common cost loading factors, since both sets of factors affect these port costs. (Ameritech Initial Brief at 277.)

E. The Commission Should Adjust Ameritech's Tandem Switching Costs to Correct Their Inflated Distance Assumptions (Issue I(D)(3))

Although Ameritech claims that "[t]he CLECs do not dispute the manner in which Ameritech calculated its tandem switching costs nor the resulting MOU rate," the CLECs

did challenge the inflated distance assumptions that factor into these costs. The CLECs direct the Commission to this discussion at pp. I.D.-42-44 of their Initial Brief on Switching Costs and urge it to apply the distance reductions recited in that discussion.